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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,554	07/02/2001	Alan R. Tall	64077/JPW/ADM	2853

7590

08/18/2003

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EXAMINER

LI, RUIXIANG

ART UNIT

PAPER NUMBER

1646

DATE MAILED: 08/18/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/898,554

Applicant(s)

TALL ET AL.

Examiner

Ruixiang Li

Art Unit

1646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5,9,39-46 and 51-60 is/are pending in the application.
- 4a) Of the above claim(s) 9,39 and 42-46 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41 and 51-58 is/are allowed.
- 6) ☒ Claim(s) 5,40,59 and 60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12 6) ☐ Other:

## **DETAILED ACTION**

### **I. Status of Application, Amendments, and/or Claims**

The amendment filed in Paper No. 12 on June 13, 2003 has been entered in full. Claim 5 has been amended. Claims 5, 9, 39-46, and 51-60 are pending. Claims 5, 40, 41, and 51-60 are under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

### **II. Claim Rejections Under 35 U. S. C. § 112, 2<sup>nd</sup> Paragraph**

The rejection of claims 5 and 40 under 35 U.S.C. 112, second paragraph, as set forth at page 3 of previous office action (Paper No. 11, March 10, 2003), remains.

Applicants argue that the term "specifically hybridizes" is defined in the specification and hybridization conditions are well known in the art.

Applicants' argument has been fully considered, but is not deemed to be persuasive because while the specification provides a definition for the term, neither the specification nor the art provides the hybridization condition for the claimed invention. Applicants fail to provide supporting evidence to show that the hybridization conditions specific for the present invention are well known in the art.

### **III. Claim Rejections Under 35 U. S. C. § 102**

(i) The rejection of claims 5 and 40 under 35 U.S.C. 102(b) as being anticipated by Nagase et al. (*IDS, Biochem. J.* 330:1417-1422, 1998), as set forth in paper No. 11, remains.

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Applicants argue that the reference of Nagase et al. does not teach the nucleic acid sequence of SEQ ID NO: 13 and thus does not teach all elements of the rejected claims.

Applicants' argument has been fully considered, but is not deemed to be persuasive because while the reference of Nagase et al. does not teach the nucleic acid sequence of SEQ ID NO: 13, it does teach a cDNA encoding a rat LOX-1 protein of 364 amino acids and preparation of probes from the cDNA sequences (see, e.g., Abstract; Fig. 1; page 1419, in particular 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs of left column). Since the cDNA sequence comprises fragments (at least 15 nucleotides) of the nucleic acid sequence of SEQ ID NO: 13, and these fragments can be used as a nucleic acid probe, which would hybridise with SEQ ID NO: 13, the reference of Nagase et al. meets the limitations of claims 5 and 40.

(ii) The rejection of claims 59 and 60 under 35 U.S.C. 102(b) as being anticipated by Sawamura et al. (*IDS, Nature* 386:73-77, 1997), as set forth in paper No. 11, remains.

Applicants argue that the reference of Sawamura et al. does not teach the amino acid sequence of SEQ ID NO: 14, and thus does not anticipate claims 59 and 60.

Applicants' argument has been fully considered, but is not deemed to be persuasive because claims 59 and 60 are drawn to a product (a membrane preparation or a soluble cell extract comprising a mammalian oxidized low-density lipoprotein receptor (LOX-1)) by a process. Since a new process of obtaining a product, where the product is already known in the art, does not distinguish the product from the art. Thus, the reference of Sawamura et al. meets the limitations of claims 59 and 60.

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#### IV. Conclusion

Claims 41 and 51-58 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruixiang Li whose telephone number is (703) 306-0282. The examiner can normally be reached on Monday-Friday, 8:30 am-5:00 pm.

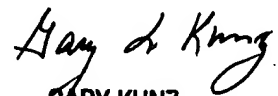
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564. The fax phone number for this Group is (703) 305-3014 or (703) 308-4242.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [yvonne.eyler@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Ruixiang Li  
Examiner  
August 15, 2003

  
GARY KUNZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600